

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREG LEE,

Petitioner.

v.

MIKE EVANS, Acting Warden,

Respondent.

No. C 06-06564 SBA (PR)

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

Petitioner has requested appointment of counsel in this action.

The Sixth Amendment right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require" and such person is financially unable to obtain representation. The decision to appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the exception rather than the rule by limiting it to: (1) capital cases; (2) cases that turn on substantial and complex procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or mentally or physically impaired petitioners; (4) cases likely to require the assistance of experts either in framing or in trying the claims; (5) cases in which petitioner is in no position to investigate crucial

1 facts; and (6) factually complex cases. See generally 1 J. Liebman & R. Hertz, Federal Habeas
2 Corpus Practice and Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only
3 when the circumstances of a particular case indicate that appointed counsel is necessary to prevent
4 due process violations. See Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th
5 Cir. 1965).

6 The Court finds that appointment of counsel is not warranted in this case. Petitioner's claims
7 are typical claims that arise in criminal appeals and are not especially complex. This is not an
8 exceptional case that would warrant representation on federal habeas review. Therefore, Petitioner's
9 motion for appointment of counsel is DENIED. This denial is without prejudice to the Court's sua
10 sponte reconsideration should the Court find an evidentiary hearing necessary following
11 consideration of the merits of Petitioner's claims.

12 IT IS SO ORDERED.

13 Dated: 5/16/07

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15 SAUNDRA BROWN ARMSTRONG
16 UNITED STATES DISTRICT JUDGE
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United States District Court
For the Northern District of California

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GREG LEE,

Plaintiff,

v.

EVANS et al,

Defendant.

Case Number: CV06-06564 SBA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 17, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Greg Lee K90835
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960

Dated: May 17, 2007

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk